

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

United States of America,

Plaintiff,

v.

Anthony Joseph Tenerelli,

Defendant.

Criminal No. 07-194(1) (JNE/FLN)  
Civil No. 11-1300 (JNE)  
ORDER

A jury found Anthony Joseph Tenerelli guilty of (1) conspiracy to distribute and possess with intent to distribute methamphetamine, (2) possession with intent to distribute methamphetamine, and (3) the crime of being a felon in possession of a firearm. The Court sentenced him to 280 months' imprisonment, he appealed, and the Eighth Circuit affirmed. *United States v. Tenerelli*, 614 F.3d 764 (8th Cir. 2010), *cert. denied*, 131 S. Ct. 1589 (2011). After the denial of his petition for a writ of certiorari, Tenerelli moved under 28 U.S.C. § 2255 (Supp. III 2009) to vacate, set aside, or correct his sentence. Because the record conclusively demonstrates that Tenerelli is not entitled to relief, the Court denies his motion without a hearing.<sup>1</sup> *See Tinajero-Ortiz v. United States*, 635 F.3d 1100, 1105 (8th Cir. 2011).

In his motion, Tenerelli asserts that videotapes were improperly seized and admitted into evidence, and that he received ineffective assistance of counsel on appeal. For the reasons set forth in the government's response, the Court denies his motion. Briefly, with regard to the videotapes, Tenerelli persists in arguments that the Eighth Circuit rejected on appeal. *Tenerelli*, 614 F.3d at 769-70 (concluding that "any error in admitting the videotapes was harmless beyond

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<sup>1</sup> After he had filed his § 2255 motion, Tenerelli sought appointed counsel. The Court is not persuaded that the interests of justice require that counsel be appointed in this case. *See* 18 U.S.C. § 3006A(a)(2)(b) (2006). The Court therefore denies Tenerelli's motion for appointment of counsel.

a reasonable doubt”). The arguments afford no basis for relief under § 2255. *See United States v. Wiley*, 245 F.3d 750, 752 (8th Cir. 2001). With regard to his appellate counsel, Tenerelli has not demonstrated that counsel’s performance was deficient or that he was prejudiced. *See Anderson v. United States*, 393 F.3d 749, 753-54 (8th Cir. 2005).

An appeal cannot be taken from a final order denying a motion under § 2255 without a certificate of appealability. 28 U.S.C. § 2253(c)(1)(B) (2006); Fed. R. App. P. 22(b)(1). A court cannot grant a certificate of appealability unless the applicant has made “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). “Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Where a district court rejects claims on procedural grounds, a certificate of appealability “should issue when the prisoner shows . . . that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Id.* Tenerelli has not demonstrated that reasonable jurists would find the rejection of his claims debatable or wrong. The Court declines to issue a certificate of appealability.

Based on the files, records, and proceedings herein, and for the reasons stated above, IT IS ORDERED THAT:

1. Tenerelli’s § 2255 motion [Docket No. 216 in Criminal No. 07-194(1)] is DENIED.
2. Tenerelli’s motion for appointment of counsel [Docket No. 219 in Criminal No. 07-194(1)] is DENIED.

3. A certificate of appealability is DENIED.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: July 12, 2011

s/ Joan N. Ericksen  
JOAN N. ERICKSEN  
United States District Judge